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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services	)	CC Docket No. 94-54 RM-8012
	)	

To: The Commission

REPLY COMMENTS OF AT&T CORP.

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To: The Commission

REPLY COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T"),[1/] by its attorneys, hereby submits these reply comments in the above-captioned Notice of Proposed Rule Making and Notice of Inquiry.[2/]

INTRODUCTION AND SUMMARY

AT&T's and McCaw's initial comments in this proceeding demonstrated that market forces will induce carriers to implement economical and efficient interconnection and thus the imposition of interconnection requirements on providers of commercial mobile radio services ("CMRS") would be unnecessary and counterproductive. The comments also showed that the adoption of uniform equal access obligations would yield significant consumer benefits and advance the statutory goal of regulatory parity. A review of the other comments filed here confirms that this balanced approach most closely conforms to the goal of establishing a

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1/ On September 19, 1994, AT&T acquired McCaw Cellular Communications, Inc. ("McCaw"), which became a wholly-owned subsidiary of AT&T. McCaw is not submitting separate reply comments in the above-captioned proceeding.

2/ In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 94-145 (rel. July 1, 1994) ("Notice").

"reasonable level of regulation" that "avoid[s] unwarranted regulatory burdens for . . . CMRS providers."[3]

Some commenters attempt to justify the imposition of mandatory interconnection requirements on some or all CMRS providers. Their efforts are unavailing. Recycling arguments already rejected by the Commission, these commenters argue that CMRS-to-CMRS interconnection is mandated by statute; that cellular operators are "dominant" carriers controlling bottleneck facilities that must be opened to interconnection by government fiat; and that the states should have the authority to regulate the rates, terms, and conditions of CMRS-to-CMRS interconnection. Adoption of these proposals would disserve the public interest by exacerbating regulatory disparities among CMRS providers and undermining the statutory goal of a seamless, national wireless infrastructure.

Other commenters argue that some or all CMRS providers should be exempt from equal access requirements, because they are "new entrants" or because they lack control over bottleneck facilities. These commenters misconstrue the rationale for equal access. The Commission's analysis of the benefits of equal access correctly emphasizes the increased consumer choice that would result, rather than whether a particular CMRS provider exercises market power or the level of competition among all CMRS providers. The benefits of competition will be available to all end users only if all CMRS providers are subject to equal access.

To be effective, moreover, equal access must truly be equal. Equal access must include 1+ presubscription <u>and</u> the ability to reach interexchange carriers through the dialing of access codes, and be made available to roamers as well as subscribers in their home systems. To avoid

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[3] <u>Id.</u> at ¶ 2.

undue customer confusion and to minimize network redesign and regulatory disparities, any equal access plan should use LATAs as local calling areas instead of the myriad serving areas now used by CMRS providers.

The Commission is not faced with an "all or nothing" choice in this proceeding. Rather, the Commission's responsibility here is to carefully calibrate the appropriate level of regulation for CMRS providers. It need not and should not impose burdensome and unnecessary interconnection requirements on CMRS providers because it has concluded that the adoption of equal access rules would serve the public interest. Nor should it forgo equal access because interconnection requirements are inappropriate.

I. SECTION 332(c)(1)(B) OF THE COMMUNICATIONS ACT DOES NOT REQUIRE CMRS-TO-CMRS INTERCONNECTION

In view of the undisputed complexity of the issues involved,[4/] the Commission appropriately initiated the above-captioned inquiry into the nature and scope of interconnection obligations of CMRS providers. The National Cellular Reseller Association ("NCRA") attempts to sidestep the inquiry by arguing[5/] that Section 332(c)(1)(B) of the Communications Act creates a new right to CMRS interconnection and that the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") requires the Commission to promulgate regulations implementing this right by August 10, 1994.[6/]

[4/] In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1499 (1994) ("Second Report and Order").

[5/] NCRA Comments at 6-9.

[6/] See Pub. L. No. 103-66, 107 Stat. 397, § 6002(d)(3)(C) (prescribing a one-year deadline for the Commission to "issue such other regulations as are necessary to implement" Section 332(c)). NCRA Petition at 2-5.

NCRA's assertions notwithstanding, the statute does not create any new CMRS interconnection rights. The first sentence of Section 332(c)(1)(B) provides that "[u]pon the reasonable request" of a CMRS provider, the Commission shall order a common carrier to interconnect with such a provider "pursuant to the provisions of Section 201 of the Act." That provision does not itself mandate interconnection. Rather, Section 201 gives the Commission discretion to order common carriers to provide interconnection where it "finds such action necessary or desirable in the public interest."[7] Cellular resellers, such as those NCRA represents, have yet to satisfy this public interest showing.[8]

Moreover, as the second sentence of Section 332(c)(1)(B) makes clear, nothing in Section 332 (c) "shall be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to the Act." Because Section 332(c)(1)(B) does not create any new interconnection requirements, the promulgation of rules governing such interconnection are not "necessary" under the rulemaking schedule mandated by the Budget Act, and the Commission is not guilty of "basic legal error" for failing to implement such rules by August 10, 1994.[9] The Commission correctly concluded that the questions relating to CMRS interconnection "warrant further examination in the record."[10] Whether the Commission will exercise its

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[7] 47 U.S.C. § 201.

[8] By contrast, the Commission has found that the public interest would be served by requiring local exchange carriers to interconnect with CMRS providers. Second Report and Order, 9 FCC Rcd at 1497-1498.

[9] Cf. NCRA Comments at 5.

[10] Second Report and Order, 9 FCC Rcd at 1499. The Commission cannot be faulted for seeking to develop a more thorough record upon which to base whatever conclusions it ultimately may reach regarding whether -- or to what extent -- requiring CMRS interconnection is "necessary or desirable in the public interest" within the meaning of Section 201. Indeed, the (continued...)

discretion to require CMRS interconnection, and the promulgation of any necessary rules, must await the conclusion of the instant inquiry.

II. THE IMPOSITION OF INTERCONNECTION OBLIGATIONS ON CMRS PROVIDERS IS UNNECESSARY AND WOULD IMPEDE THE DEVELOPMENT OF CMRS

In its initial comments, McCaw demonstrated that the imposition of interconnection requirements on CMRS providers was unnecessary and counterproductive. No commenters have adduced any evidence to challenge this conclusion. Nonetheless, some commenters have reprised earlier proposals to impose such requirements on cellular carriers alone and to accord the states authority to require interconnection. Such proposals would exacerbate regulatory disparities among CMRS providers and undermine the statutory goal of a seamless, national wireless infrastructure. They should be rejected.

A. The Commission's Equal Access Analysis Does Not Support The Conclusion that CMRS Interconnection Obligations Are Necessary or Desirable In The Public Interest

NCRA errs in asserting that the Commission's tentative decision to impose equal access requirements on cellular carriers must perforce result in the imposition of interconnection obligations on those carriers.[11] The contentions of several commenters notwithstanding,[12]

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[10] (...continued)
Administrative Procedure Act requires that the agency be able to demonstrate the connection "between the facts found and the choices made," and the reasonableness of the agency's conclusions "is a matter to be tested on the basis of material in the rulemaking record." Home Box Office, Inc. v. FCC, 567 F.2d 9, 35, 42 (D.C. Cir.) (per curiam), cert. denied, 434 U.S. 829 (1977). See also AT&T v. FCC, 974 F.2d 1351, 1354 (D.C. Cir. 1992); City of Brookings Mun. Tel. Co. v. FCC, 822 F.2d 1153, 1165 (D.C. Cir. 1987).

[11] NCRA at 9.

CMRS providers do not have bottleneck control of essential facilities.[13/] In the absence of control over such facilities, the imposition of interconnection obligations is unnecessary and would disserve the public interest.[14/]

Unlike the local exchange carriers that are subject to interconnection requirements, CMRS providers enjoy neither monopoly control over essential facilities nor a degree of market power that would give them the incentive and ability to create substantial barriers to entry. The imposition of interconnection requirements can be justified only by the presence of sustained market power that is created or enhanced by the refusal to interconnect, or by evidence of a market weakness that will induce competitors to deny interconnection where it is otherwise economically efficient to provide it. No evidence has been presented in this proceeding to support a conclusion that the CMRS marketplace suffers from either defect.

As discussed in greater detail below, by contrast, the lack of control over bottleneck facilities by cellular carriers and other CMRS providers is not the determinative factor in deciding whether to impose equal access requirements. The Commission's analysis of the benefits of equal access does not turn on whether a particular CMRS provider exercises market power or on the level of competition among all CMRS providers. A CMRS provider may lack market power, but its customers will be unable to choose 1+ dialing to reach the long distance carrier of their choice unless the provider is subject to equal access requirements.

12/ (...continued)

12/ NCRA at 9-16; Cellular Service, Inc. and ComTech, Inc. ("CSI/ComTech") at 7; The People of the State of California and the Public Utilities Commission of the State of California ("CPUC") at 4.

13/ Notice at ¶ 124, citing Second Report and Order, 9 FCC Rcd at 1499.

14/ See McCaw Comments at 5-9 and Exhibit A thereto.

Equal access and CMRS interconnection obligations are distinct issues, which require independent analysis. That they are not in lockstep is reflected by the Commission's decision to propose rules for the former while reserving judgment on the latter until it could review the results of this inquiry. The Commission should reject NCRA's flawed attempt to tie them together.

B. The Commission Should Again Reject the Dominant/Non-Dominant Distinction as a Basis for CMRS Regulation

NCRA and American Personal Communications ("APC") attempt to revive the argument that cellular providers are "dominant" providers of CMRS requiring more stringent regulatory treatment.[15/] As it has before, the Commission should dismiss these transparent attempts to re-create the regulatory disparities that Congress sought to correct.

In the Second Report and Order, the Commission determined that cellular providers "face sufficient competition" to justify the relaxation of certain rules traditionally applied in non-competitive markets.[16/] No commenter has presented any evidence to challenge this conclusion. Contrary to the commenters' suggestion, moreover, Section 332(c) does not require the Commission first to classify a commercial mobile service provider as "non-dominant" to justify forbearance. Congress was well aware of the dominant/non-dominant distinction when it enacted

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15/ NCRA at 18-20; APC 6-9. See also CPUC at 5 (interconnection obligations should be imposed on cellular carriers but not switched-based resellers because they do not control bottleneck functions); Allnet at 7-8 (no need to impose interconnection obligations on resellers because they have no market power); TRW at 7-8 (Commission should impose interconnection obligations on all CMRS providers except mobile satellite service providers).

16/ Id. at ¶ 145 (citing Cellular CPE Bundling Order, 7 FCC Rcd at 4028-29). See also Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (Fifth Report and Order), 98 FCC 2d 1191, 1204, n.41 (1984) (emphasizing that cellular carriers' "ability to engage in anticompetitive conduct or cost-shifting appears limited").

Section 332(c).[17] Nonetheless, when House-Senate conferees added the requirement that the Commission evaluate market conditions before it decided to forbear,[18] they did not limit forbearance to carriers that had been declared "non-dominant." Rather, they required only that the Commission determine that forbearance will "promote competition among providers of commercial mobile services."[19] The Commission was clearly empowered to forbear from imposing unnecessary regulations on cellular providers and should reject any arguments to the contrary.

Congress's principal purpose in enacting Section 332(c) of the Act was "to establish a Federal regulatory framework to govern the offering of all commercial mobile services."[20] Congress was aware that providers of what were, in fact, comparable services were subject to differing regulatory requirements, and sought to promote regulatory parity.[21] While Congress also recognized that differences among services and market conditions might warrant dissimilar regulation,[22] it pointedly refrained from mandating dissimilar regulation of mobile services or

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17/ See, e.g., House Report at 260-61 (stating that the Committee was "aware" of the court decision voiding the "Commission's long-standing policy of permissive detariffing, applied to non-dominant carriers").

18/ See 47 U.S.C. § 332(c)(1)(C).

19/ 47 U.S.C. § 332(c)(1)(C); see also H.R. Rep. No. 213, 103d Cong., 1st Sess. 491 (1993)("Conference Report").

20/ Conference Report at 490.

21/ House Report at 260 & n.2 (citing, inter alia, Fleet Call, Inc., 6 FCC Rcd. 1533 (1991)).

22/ Conference Report at 491.

providers as part of the comprehensive Federal regulatory framework for commercial mobile services.[23]

Applying the statutory test to determine the extent to which traditional common carrier regulation should apply to providers of commercial mobile services, it is clear that the differences among commercial mobile service providers are insufficient to justify dissimilar regulation. The fact that some commercial mobile service providers are operational, while others have not yet entered the market, does not support disparate treatment because no mobile service operator has an entrenched, controlling position in the marketplace. The penetration levels of cellular, paging, and other mobile services are low relative to the marketplace potential of wireless communications.

In the nascent mobile services marketplace, disparate regulation will not "enhance competition."[24] To the contrary, it is more likely to thwart the development of an advanced information infrastructure by impeding full competition among all providers of such services. The Commission should reject commenters' attempts to impose unnecessary classifications on the CMRS marketplace in order to frustrate the goals of Section 332(c).

C. The Commission Should Not Order Cellular Carriers to "Unbundle" Their Networks or Otherwise Provide Interconnection for Resellers' Switches

NCRA, CSI/ComTech and the California Public Utilities Commission ("CPUC") endorse the adoption of requirements that would entitle switched-based resellers to interconnect with facilities-based CMRS providers.[25] As McCaw indicated in its initial comments, however, the

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[23] Id. ("Differential regulation of providers of commercial mobile services is permissible but is not required in order to fulfill the intent of this section.") (emphasis supplied).

[24] Cf. 47 U.S.C. § 332(c)(1)(C).

[25] NCRA at 12-16; CPUC at 4-5; CSI/ComTech at 1, 4-12.

mandatory interconnection or "unbundling" of CMRS networks is neither necessary nor desirable, regardless of whether the party seeking interconnection is a facilities-based carrier or a reseller.[26] Proposals for the interconnection of switched-based resellers are wholly untested and raise significant technical problems.[27] Mandatory CMRS interconnection will impose operational and technical costs that will only frustrate competition by requiring CMRS providers to concentrate their efforts on interconnection rather than expending resources on research and development of new services and designing efficiency into existing systems. The Commission should reject commenters' attempts to perpetuate a fiction that would permit switched-resellers to profit from distorted prices created by unbundling requirements, price controls, and with other regulations that subsidize resellers.

Equally unpersuasive is NCRA's attempt to compare switched-based resellers to competitive access providers ("CAPs").[28] The Commission's expanded interconnection policies are intended to "open[] the remaining preserves of monopoly telecommunications service to competition."[29] Unlike facilities-based CMRS providers, local exchange carriers ("LECs")

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[26] See McCaw Comments at 14-17. See also AirTouch at 23-27.

[27] In one variant of the resellers' switch proposal, the switch was to have been located between the mobile telephone switching office ("MTSO") and the local exchange carrier's network. In another variant, the switch would have been installed at the cell site.

[28] NCRA at 12.

[29] Expanded Interconnection with Local telephone Company Facilities, 7 FCC Rcd 7369, 7372 (1992).

maintain bottleneck control over the access to the public switched network.[30/] CAPs, interexchange carriers, and enhanced service providers must have access to LEC facilities in order to provide any commercially viable public telecommunications service. By contrast, the lack of direct CMRS-to-CMRS interconnection can hardly be described as a barrier that impedes the development of greater competition in the market for mobile services. Resellers can and do provide cellular service to customers today, demonstrating that they do not need switch-to-MTSO interconnection in order to compete. Moreover, they will have increased opportunities to interconnect directly to CMRS networks -- assuming it becomes efficient to do so -- with the influx of new facilities-based competitors such as ESMR and PCS providers. Resellers can, indeed, become full-fledged network providers if they are willing to risk their capital in the imminent broadband PCS auctions. In any event, switched-based resellers can obtain interconnection with other CMRS providers through the facilities of a LEC. As McCaw demonstrated in its initial comments, this form of interconnection will be the most efficient and cost effective form of interconnection for the foreseeable future.[31/]

30/ NCRA cites, out of context, reply comments filed by McCaw in the Commission's expanded interconnection proceeding, CC Docket No. 91-141, on Sept. 20, 1991. NCRA at 4. Those reply comments addressed the need to impose interconnection requirements on local exchange carriers because of their bottleneck control of essential facilities. McCaw's position with respect the interconnection obligations of LECs is inapposite to the instant inquiry.

31/ See McCaw Comments at 9-14.

D. CMRS Interconnection Requirements Should be Governed by the Marketplace

Most commenters agree with McCaw that it would be premature to adopt CMRS-to-CMRS interconnection requirements at this time.[32] Given the rapidly expanding and changing market for mobile telecommunications services, including the impending entry of new providers, there is no basis for imposing interconnection obligations on cellular systems or other CMRS providers.[33]

Wireless carriers interconnect through the LEC switch because such an arrangement is most efficient technically and economically. To the extent there is sufficient mobile-to-mobile traffic connections between CMRS providers, McCaw demonstrated in its initial comments that those connections benefit both carriers involved and will occur without the imposition of regulation.[34]

Mandatory CMRS interconnection obligations would likely lead to the provision of interconnection in situations where the expense of doing so would exceed the value. McCaw

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[32] New York Department of Public Service ("NYDPS") Comments at 5; PCIA at 16; NYNEX at 13; Nextel at 18; New Par at 22-23; National Association of Business and Educational Radio ("NABER") at 9-11; GTE at 46; OPASTCO at 5-6; ONECOMM at 21; Ram Mobile Data at 7; RCA 9-10; SNET 13-14; Vanguard at 22; WATERCOM at 9; Southwestern Bell at 66-68; E.F. Johnson at 7; COMCAST at 16; CTIA at 25-32; AMTA at 14; ALLTEL at 8-9; AirTouch at 22; BellSouth at 11-20; Ameritech at 4; Bell Atlantic at 15; Rochester at 11; AT&T at 13; Southern at 4-5.

[33] The Commission recently acknowledged elsewhere that imposition of interconnection requirements is unnecessary in the absence of essential facilities or market power sufficient to thwart competition. See Expanded Interconnection with Local Telephone Company Facilities, CC Docket 91-141, ¶ 105 (rel. July 25, 1994) (market forces can be relied upon to induce non-dominant carriers to provide interconnection in response to demand; unnecessary to mandate interconnection obligations upon parties that lack market power and do not control bottleneck facilities).

[34] See McCaw Comments, Exhibit B at ¶ 4.

has provided evidence of the substantial costs that mandatory interconnection obligations would impose on CMRS providers and the public.[35/] The Commission should refrain from adopting policies that will operate only to delay the introduction of technological innovation.[36/]

E. Section 332(c) Preempts the States from Regulating CMRS Interconnection

In its initial comments, McCaw showed that Congress intended to preempt state regulation of CMRS interconnection as well as state-imposed requirements that CMRS providers "unbundle" their networks.[37/] Notwithstanding this statutory mandate, NCRA, the New York Department of Public Services ("NYDPS"), and the CPUC argue for state mandated authority over these matters.[38/] Likewise Pacific Bell asserts that the Commission can avoid jurisdictional conflicts over interconnection by deferring to state regulation.[39/]

The Commission can and should assert federal primacy over all CMRS interconnection matters, including rates. In enacting the state preemption provisions set forth in Section 332(c), Congress sought "[t]o foster the growth and development of mobile services, that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure. . . ."[40/] Indeed, Section 332(c)(3)(A) already preempts state

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35/ McCaw Comments at 9-14.

36/ For all of these same reasons, mandatory roaming agreements between cellular carriers and other CMRS providers are unnecessary. See APC at 7.

37/ McCaw Comments at 18-20.

38/ NCRA at 21-22; CPUC at 5-7; NYDPS at 6-7.

39/ Pacific Bell at 15-16.

40/ House Report at 260. Cf. Conference Report at 494 ("[T]he Commission, in considering the scope, duration, or limitation of any State regulation shall ensure that such regulation is consistent with the overall intent of this subsection . . . so that . . . similar services are accorded similar regulatory treatment").

regulation of CMRS interconnection rates, including the rates for intrastate interconnection.[41/] The imposition of multiple and inconsistent interconnection regulations would impose significant technical and financial burdens on CMRS providers.[42/] Allowing states to regulate intrastate CMRS interconnection rates or to set the terms and conditions of interconnection would frustrate the goal of a national wireless infrastructure operating under a uniform federal regulatory framework.

[41/] Notice at ¶ 131, citing Second Report and Order, 9 FCC Rcd at 1500. While the Second Report and Order may be read to suggest that federal its preemption of CMRS intrastate interconnection rates is contingent on the Commission's adoption of requirements for interconnection by all CMRS providers, id., 9 FCC Rcd at 1499-1500, the statutory preemption of state rate regulation is unconditional. See 47 U.S.C. § 332(c)(3). Indeed, "Congress has explicitly amended the Communications Act to preempt state and local rate and entry regulation of commercial mobile radio services without regard to Section 2(b)" of the Communications Act. Id. at 1506. The statutory language of Section 332(c) evidences a "clear intention" to preempt state rate regulation. Cf. Louisiana Public Service Comm'n v. FCC, 476 U.S. 355, 368 (1986). That intention is buttressed by the legislative history of the provision. See House Report at 260; Conference Report at 494.

If the Commission determines that interconnection obligations are unnecessary, it should preclude the states from adopting their own interconnection obligations. See pp. 5-9, supra. Under those circumstances, the states would have no intrastate interconnection rates to regulate.

[42/] For these reasons, the Commission has long preempted state regulation of the terms and conditions of LEC-to-CMRS interconnection. Second Report and Order, at 9 FCC Rcd. at 1497.

III. RESALE OBLIGATIONS SHOULD BE UNIFORMLY IMPOSED ON ALL CMRS PROVIDERS

The Commission should reject proposals to treat cellular carriers different from other CMRS providers with respect to resale obligations.[43/] The imposition of resale requirements solely on cellular licensees would thwart the clear thrust and intent of Congress to avoid differential regulation of CMRS providers and impose a significant regulatory burden on one class of CMRS providers -- cellular operators -- to the benefit of their competitors.[44/]

Numerous commenters agree with McCaw that no CMRS licensee should be permitted to resell the capacity of a competitor after it has had a reasonable amount of time to complete the initial build-out of its facilities,[45/] although commenters disagree as to what would constitute a reasonable period. As McCaw indicated, continuing the five-year window for resale to facilities-based carriers -- particularly if the resale obligation is imposed only on cellular carriers -- would disserve the public interest in promoting competition.[46/] As McCaw recommended in its opening comments, an eighteen-month window is an acceptable balance of new entrants' interest in reselling temporarily and the public interest in encouraging aggressive development of new networks.

43/ See APC at 8-9; Pacific Bell at 27-28; E.F. Johnson at 8; GTE at 47-49.

44/ Id.

45/ See Pacific Bell at 25-26; Rochester at 12-13; PCIA at 19; Bell Atlantic 17-18; BellSouth at 23-25; Southwestern Bell at 57-60; RCA at 11.

46/ See McCaw Comments at 22.

IV. THE COMMISSION SHOULD MAINTAIN THE CURRENT SYSTEM OF NEGOTIATED LEC-CMRS INTERCONNECTION AGREEMENTS IN LIEU OF TARIFFS

Notwithstanding evidence of the benefits of negotiated LEC-to-CMRS interconnection arrangements,[47] several commenters suggest that LECs should be required to file interconnection tariffs. Point Communications Company asserts that tariffs are necessary to protect the small CMRS provider because negotiation does not work.[48] Cox likewise argues that LEC tariffs are the only means of ensuring that interconnection rates are reasonable.[49] The Puerto Rico Telephone Company ("PRTC") submits that the Commission's rationale for permitting good faith negotiations for establishing interconnection arrangements is no longer sound policy because there are only three types of interconnection available.[50] MCI declares that such tariffs are the way to avoid discrimination.[51] None of these parties, however, offer any evidence to demonstrate that the cost of such regulation is offset by the perceived benefits arising from such tariffs, particularly when compared with the success and benefits achieved through the use of contracts.

As McCaw indicated in its initial comments, the demand for flexibility in structuring interconnection arrangements will only increase as new technology evolves, creating a more diverse population of CMRS providers. The continued use of negotiated interconnection arrangements will allow LECs to respond to these new CMRS providers' specific needs rather

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47/ Notice at ¶ 114.

48/ Point at 5.

49/ Cox at 4-10.

50/ PRTC at 2-3.

51/ MCI at 11-12.

than forcing them into interconnection arrangements designed to meet the needs of other CMRS providers. Thus, LEC-to-CMRS interconnection arrangements should continue to be established on a contractual basis.[52] The interests of CMRS providers can be protected, where necessary, through the complaint processes available at the Commission or at state public utility agencies.

V. THE CONSUMER BENEFITS OF EQUAL ACCESS OUTWEIGH THE COSTS TO CMRS PROVIDERS

In the Notice, the Commission proposed rules that would impose equal access requirements on all cellular service providers and sought comment on whether or not it should also extend such requirements to all other CMRS providers. The Commission tentatively concluded that affording cellular subscribers equal access to interexchange carriers would provide significant benefits in the form of increased consumer choice, lower prices and access to new services.[53]

The comments of a wide range of parties, including NARUC, the CPUC, the NYDPS[54] and the General Services Administration ("GSA"),[55] the only customer to file comments, amply

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[52] See McCaw Comments at 23-24.

[53] Notice at ¶¶ 36-37.

[54] NARUC at 2; CPUC at 2-3; NYDPS at 24.

[55] GSA at 2-4 ("The provision of equal access to interexchange carriers by CMRS providers would promote competition in both industries to the ultimate benefit of all end users."). GSA's comments should put to rest Southwestern Bell's unfounded assertion that "the public does not want equal access." See Southwestern Bell at 31. Southwestern Bell's screed against the alleged anticompetitive practices of interexchange carriers, id. at 25-31, can be dismissed as a misdirected and misinformed case for relief from the Modification of Final Judgment. See, e.g., id. at 29 (claiming that, "[w]ere it free to do so," it would pass on discounted bulk interexchange rates to its customers). As such, it is irrelevant to the instant proceeding. Motions for relief from that decree are pending in the appropriate forum, the U.S. District Court. U.S. v. v. Western Electric Co., Civ. A. No. 82-0192 (HHG) (D.D.C.), Motion of the Bell Companies (continued...)

demonstrate that the Commission was correct in its assessment and that it should require that all CMRS providers offer equal access.[56] As LDDS correctly observes:

> [E]qual access promotes customer choice by placing the decision concerning what long distance provider to use in the hands of the wireless customer who must pay for the service. This linking of choice and accountability is the key to both competition and enhanced efficiency in the wireless long distance market. Equal access permits the end user to choose among available service options and pricing plans, selecting the combination of features that best suits his or her needs.[57]

The imposition of mandatory equal access on local exchange carriers has proved to be an explosive catalyst to competition in the interexchange market. Carriers have proliferated, rates have fallen and an increasingly large array of services have been offered to the public. The Commission should mandate equal access on CMRS providers to provide the same opportunity to end users of those services.

Predictably, a large number of CMRS providers, anxious to continue an environment which allows them rather than the consumer to select an interexchange carrier, oppose the imposition of an equal access requirement.[58] These commenters argue that requiring CMRS providers to offer equal access is unnecessary because customers already have a range of

[55] (...continued)
for a Modification of Section II of the Decree to Permit Them to Provide Cellular and Other Wireless Services Across LATA Boundaries (filed June 20, 1994), and U.S. v. Western Electric Co., Civ. A. No. 82-0192 (D.D.C. July 1994) Motion of Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, and Southwestern Bell Corporation to Vacate the Decree (filed July 6, 1994).

[56] See, e.g., PRTC Co. at 1-2; MCI at 2-3; Allnet at 2-4.

[57] LDDS at 12-13.

[58] See, e.g., Southwestern Bell at 19-34; AirTouch at 3-8; Americall at 2-4.

alternatives;[59] that it would be too expensive[60] or technically infeasible[61]; and that it would benefit the larger interexchange carriers at the expense of end users or smaller carriers.[62] None of these arguments withstands close scrutiny.

First, the lack of control over bottleneck facilities by cellular carriers and other CMRS providers should not be the determinative factor in deciding whether to impose equal access requirements. As Bell Atlantic has observed, the Commission's analysis of the benefits of equal access does not turn on whether a particular CMRS provider exercises market power or on the level of competition among all CMRS providers.[63] Rather, in tentatively deciding to impose equal access requirements on cellular carriers, the Commission emphasized the increased consumer choice that would result from competition among interexchange carriers.[64] A CMRS provider may lack market power, but the customers of that provider will still be unable to choose 1+ dialing to reach the long distance carrier of their choice unless the provider is subject to equal access requirements.

A number of commenters suggest that lack of control over bottleneck facilities by any one CMRS provider is relevant because an end user deprived of access to his or her preferred

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[59] See, e.g., Vanguard at 7-8; Columbia at 3-4; New PAR at 4.

[60] See, e.g., Highland Cellular at 2; Onecomm at 12-14; CTIA at 22-23; SacoRiver at 3; Ram Mobile Data at 3-4.

[61] See, e.g., Nextel at 11; American Mobile Telecommunications Association ("AMTA") at 10.

[62] See, e.g., Comcast at 29-34; Vanguard at 12-14; AirTouch at 10-11; Small Market Cellular Operators at 4; OneComm at 16-17.

[63] Bell Atlantic at 9.

[64] Notice at ¶ 36-8.

interexchange carrier can always switch providers.[65] The commenters fail to explain why such a burden should be imposed on consumers seeking to obtain interexchange service from the carrier of their choice. Their argument also ignores the record as well as the reality that the absence of equal access effectively removes all meaningful choice from the end user at the time he or she is attempting to place the call. "Dial around" access to interexchange carriers through 10XXX, 800, or 950 numbers is not equal access.

Second, those commenters who argue that equal access would be too expensive provide no credible evidence to support their claims. In fact, as shown by the NYDPS, the cost to CMRS providers of implementing equal access should be relatively low. Most CMRS providers already use digital switches which have an inherent capacity for equal access; moreover, trunking costs will be minimal or non-existent.[66] In addition, CMRS providers will be able to recover some or all of the costs of equal access from charges assessed on interexchange carriers.[67]

To the extent that some CMRS providers are technically incapable of providing equal access under whatever generally applicable schedule the Commission adopts in this proceeding,[68] those providers should be permitted to seek waivers for the minimum period necessary to come into compliance. Such waivers should not be granted unless the provider can

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[65] See e.g., GTE at 4; Nextel at 5-6; OneComm at 6-9.

[66] NYDPS at 3; see also, CPUC at 2; WilTel at 11.

[67] The Commission should use a "bona fide" request for equal access as the triggering mechanism for the requirement. This would allow CMRS providers to avoid incurring equal access expense until such time as an alternative interexchange carrier seeks to offer service in the CMRS provider's serving area. Cf. Western Wireless Corporation at 6; Rochester Telephone Corporation at 6; AT&T at 10, n.16.

[68] See, e.g., AMTA at 10; OneComm at 15.

make a compelling showing of infeasibility, however. In all events, the current inability of a particular CMRS provider to make equal access available is not a justification for a permanent exemption from equal access requirements[69] or a rationale for the Commission to forgo imposing such requirements as a general matter.

Finally, a number of commenters claim that equal access requirements will deprive consumers of the benefits of bulk discounts that certain CMRS providers have allegedly obtained from interexchange carriers and will somehow benefit larger interexchange carriers at the expense of smaller carriers that lack the means to market directly to end users.[70] Despite their professed concern for end users and interexchange competition, however, the true aim of these commenters is to retain control over the offering of long distance service. Notably, every long distance carrier commenting in these proceedings, whether large or small, supports the adoption of equal access requirements.[71] Likewise, the comments indicate that the benefits of the bulk discounts obtained by cellular carriers have not been passed-through to end users.[72] End users will derive the maximum benefit from interexchange competition only when they have the

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[69] For example, although supporting equal access generally, Claircom observes that the specialized technical and nationwide service characteristics of air-ground service may render traditional local exchange equal access standards inappropriate for providers of such service. See Claircom at 4-5. For this reason, the application of equal access in the air-ground context should reflect the transient nature of the vast majority of users and the nationwide nature and other technical characteristics of the services. To that end, "dial around" equal access would be more appropriate as an interim form of equal access for air-ground providers until other methods of equal access are available on air-ground services. See id. at 8-9.

[70] AirTouch at 10-11; Comcast at 29-34; Lake Huron Cellular at 4.

[71] See Notice at ¶ 18; see also LDDS at 12-13; WilTel at 5.

[72] See, e.g., Southwestern Bell at 34; NYNEX at 5.

opportunity to select service directly from among rival carriers. Anything less represents an unjustified and unnecessary limitation on consumer sovereignty.

VI. ALL CMRS PROVIDERS SHOULD BE SUBJECT TO EQUAL ACCESS REQUIREMENTS

A number of commenters argue that, even if cellular carriers are made subject to equal access requirements, such requirements are unnecessary for new entrants in the CMRS marketplace,[73] or providers whose predominant business is the furnishing of service other than CMRS.[74] As noted above, however, exempting certain CMRS providers from equal access obligations will deprive their customers of the competitive benefits that flow from equal access. As the Commission has also recognized,[75] its tentative decision to impose equal access obligations must be implemented in conformance with the statutory objective of ensuring

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[73] See, e.g., Nextel at 8-9; Columbia PCS at 3-4; National Association of Business and Educational Radio at 8.

[74] Geotek at 2; E.F. Johnson at 4.

[75] See Notice at ¶¶ 2-3.

consistent regulatory treatment of like wireless services.[76] For these reasons, equal access obligations must be applied uniformly to all CMRS providers.[77]

Nextel argues that because it is a start-up operation, compliance with equal access requirements would be especially burdensome.[78] In fact, the costs and burdens associated with equal access are likely to be lower for start-up operations since there are no expenses or burdens associated with converting existing systems.[79] Even as a start-up, moreover, Nextel will compete directly with cellular providers,[80] and it should be subject to the same equal access requirements.

Nextel's recommendations notwithstanding, Congress specifically considered and rejected a proposal to authorize the imposition of disparate regulatory requirements on existing providers

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76/ See e.g., House Report at 259 (Section 332(c) amendments designed "to provide that services that provide equivalent mobile services are regulated in the same manner"); id. ("[T]he legislation establishes uniform rules to govern the offering of all commercial mobile services"); id. at 260 ("The Committee finds that the disparities in the current regulatory scheme could impede the continued growth and development of commercial mobile services and deny consumers the protections they need . . ."). See also Notice at ¶ 2 ("implementing an even-handed regulatory scheme under Section 332 would promote competition by refocusing competitors' efforts away from strategies in the regulatory arena and toward technological innovation, service quality, competitive pricing and responsiveness to consumer needs").

77/ There is no legal or policy basis for Nextel's request to postpone equal access requirements for carriers that will not be reclassified as CMRS providers until August 10, 1996. Nextel at 11-12. Such a proposal, if adopted, would deprive Nextel's subscribers of the benefits of equal access and extend the disparities between private and common carrier licensees that the enactment of Section 332(c) was meant to correct. The statutory three-year transition period for private land mobile carriers was not intended to shield those carriers from new requirements applicable to all similarly situated mobile service licensees.

78/ Nextel at 8-9.

79/ Cf. Notice at ¶ 46.

80/ See AT&T at 8, n.12; McCaw at 28-29.